

## **TITLE 4. DEPARTMENT OF FOOD AND AGRICULTURE**

### **AGENCY EXPRESS FINDING OF EMERGENCY**

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (Department) has determined that the immediate adoption of emergency regulations is necessary to preserve the public health, safety and general welfare. Due to the unpredictability of gasoline supplies within California, and the likelihood that this situation will persist for an indeterminate period, it is necessary that the Department consider an emergency amendment to the gasoline Reid Vapor Pressure (RVP) and Vapor Lock Protection Class Vapor/Liquid Ratio (V/L Ratio) standards for gasoline from the effective date of the amendment through October 31, 2005. The emergency amendment is proposed to mitigate the impact of Hurricane Katrina on California gasoline supplies.

The Department proposes to amend regulations contained in Title 4, Division 9, Chapter 6, Article 5, Section 4140 to modify the RVP and V/L Ratio requirement for gasoline contained in the American Society for Testing and Materials (ASTM) standard D4814. This will allow fuel manufacturers to produce gasoline using wintertime fuel standards immediately, thus refining 8% to 10% more gasoline per barrel of crude oil.

This emergency regulation is being proposed concurrently with the emergency regulation proposed by California EPA Air Resources Board and mirrors its requirements.

### **STATEMENT OF SPECIFIC FACTS SHOWING NEED FOR IMMEDIATE ACTION AND INFORMATIVE DIGEST**

The Department of Food and Agriculture, Division of Measurement Standards' Petroleum Products Program is charged with the responsibility to establish performance and driveability specifications for engine fuels sold in California. The Department is required to adopt, by reference, the latest standards of a recognized consensus organization or standards writing organization, such as the American Society for Testing and Materials (ASTM). The Department has adopted ASTM standards for gasoline, diesel fuel, kerosene, and fuel oil. (Bus. & Prof. Code sections 13440 and 13450.)

Hurricane Katrina, which hit the Gulf Coast on August 29, 2005, has had a very significant impact on the nation's oil production and refining industries. In the week since the storm hit, supplies of gasoline have been strained in the Southeast, Midwest and Atlantic states. As a result the national retail prices per gallon of regular gasoline are reported to have risen 45 cents to \$3.06. Prices in California have also gone up by 27 cents to \$3.05. Wholesale prices of gasoline have risen even more.

Although it is not known how long it will take to restore production capacity, there is virtual certainty that it will be at least several weeks before production recovers and/or

replacement products can be imported. In the meantime, supplies in the east will likely be low, shortages may occur and high prices will persist.

On August 31, 2005, the U.S. Environmental Protection Agency (U.S. EPA) immediately waived the federal RVP limits for gasoline to allow for greater production of gasoline. These U.S. EPA actions did not modify California regulations currently in effect.

Although West Coast refinery capacity and crude oil imports were not directly affected by Hurricane Katrina, the ability of those refineries to fully supply California motorists is very dependent on imports from the U.S. Gulf Coast and Europe.

Refiners in California normally depend on imports of gasoline and blending components from a variety of domestic and foreign sources in order to produce adequate supplies of gasoline to meet local demand; these imports normally represent between 10 and 15 percent of the state's total gasoline supply. Most imports are from the Gulf of Mexico (including the Virgin Islands), Canada (Nova Scotia) and Europe (Finland).

The damage from Hurricane Katrina reduced the production of crude oil and the output of gasoline and other finished product from several Gulf Coast refineries which supply gasoline to local markets and customers in the upper Midwest, Atlantic states, and the Northeast. The loss of production of transportation fuels amounted to between 10 and 12 percent of the total supply of these fuels in the U.S. While a number of these refineries have returned to normal operation, nearly half of the production capacity may not resume normal operations for several weeks.

The temporary loss of refinery capacity in the Gulf Coast has reduced availability of gasoline supplies that could be shipped to California from that region. In addition, some cargoes of gasoline that would normally be available for use in California have been diverted to other destinations in the East and Southeast U.S. that have experienced the severest shortage of gasoline. Since marine tankers require two weeks or more to transit from their point of origin to California, the full impacts resulting from decreased availability of gasoline imports will probably not be felt in the State for another week or two.

Relaxing the RVP standard and the V/L Ratio standard for California gasoline for the rest of the 2005 summertime season will permit California refiners to immediately increase their production of California gasoline by 4 to 10 percent by volume by using winter gasoline components held in storage and retaining these components in refined gasoline rather than removing them. This will provide immediate supply relief. Without the relief provided by the proposed amendments, California refiners would try to offset their supply shortfalls by importing complying gasoline from alternative sources. However, there are a limited number of refineries outside the U.S. that are configured to produce complying California gasoline, and it could take 2 to six weeks to start receiving these supplies from foreign sources.

No other measures have been identified that would with certainty offset the potential shortage in California gasoline supplies in the next few weeks to the extent that would be achieved by the proposed amendments.

Because of this situation, the Department is taking emergency action to relax performance and driveability regulations to enable gasoline production increases by California refineries. Specifically, the Department seeks to allow an early transition from summertime low-RVP and V/L Ratio gasoline to wintertime higher-RVP gasoline and V/L Ratio gasoline formulas.

### **COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Secretary has determined that this proposal does not impose a mandate on local agencies or school districts.

The Secretary has also determined that this action will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.

### **AUTHORITY**

Pursuant to Business and Professions Code, Division 5, Sections 12027 and 13440.

### **REFERENCE**

The Department proposes to amend the current regulations to implement, interpret, and make specific the provisions of the Business and Professions Code, Sections 13401 and 13440.

### **CONTACT PERSON**

Inquiries regarding the substance of the proposed regulatory action may be directed to David Lazier, Branch Chief, Division of Measurement Standards, at (916) 299-3044.